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Report Says Export Controls on Technology Are “Broken”

The current U.S. export control system for both military and dual-use goods and technology is “fundamentally broken” and is causing the U.S. more harm than good, according to a new report being issued by two committees of the National Research Council (NRC). Although not directed specifically at the new Obama administration, the report calls for a broad realignment of export controls, including changes in the organizational structure for licensing, the balance between national security and competitiveness, and in dealing with foreign scientists through the visa system. “In the committee’s view, it is important to act immediately, within the boundaries of the President’s authority, to ameliorate the policy logjam that is the unintended consequence of Congress’s inaction over dual-use export controls,” the report states.

A pre-publication version of “Beyond Fortress America: National Security Controls on Science and Technology in a Globalized World”, says the current export control system, which was designed for the Cold War, “now harms our national and homeland security, as well as our ability to compete economically.” It declares: “The system of export controls on the international flow of science, technology, and commerce is fundamentally broken and cannot be fixed by incremental changes below the presidential level.”

The report calls for restructuring procedures under both the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), including creation of a new administrative entity to serve as a coordinating center that would receive all export license applications and determine whether they should be handled by Commerce or State. The center would also coordinate interagency reviews, manage a new process to review control lists and “sunset” obsolete controls. The report also recommends establishment of an independent, presidentially appointed export appeals panel, preferably housed in the White House National Security Council, which would “hear and decide disputes about whether export licenses are required, whether particular decisions to grant or deny licenses were made properly, and whether sunset requirements have been carried out properly.”

Obama Administration’s Views on China’s Currency Still Muddled

The Obama administration’s handling of China’s currency manipulation may be as muddled as the Bush administration’s, testimony by Treasury Secretary nominee Tim Geithner at his confirmation hearing Jan. 21 suggested. Although Geithner in written answers to Senate Finance Committee questions said President Obama believes China is manipulating its currency, the

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Treasury nominee backed away from that statement during the hearing. In both his written and oral statements, Geithner's approach to China sounded a lot like his predecessor's, Henry Paulson. "President Obama - backed by the conclusions of a broad range of economists - believes that China is manipulating its currency," he said in his written answer. "President Obama has pledged as President to use aggressively all the diplomatic avenues open to him to seek change in China's currency practices," he added. "The question is how and when to broach the subject in order to do more good than harm," Geithner said.

At the confirmation hearing, Sen. Jim Bunning (R-Ky.) noted that Obama as a senator had supported legislation to amend U.S. trade law to make it easier to address China's currency manipulation. "Do you believe that currency manipulation by China is a significant issue today and what would you do to address it as Treasury secretary?" Bunning asked.

"I do believe it is a significant issue, as I said earlier. I believe it is important for the United States and for the global economy that our major trading partners operate with a flexible exchange rate system and that market forces determine the level of that exchange rate," Geithner responded. "I think that is very important, and I will, when I have some time to think through how best to achieve that objective, look forward to the chance to work with you and your colleagues on the committee on how we do that. But you are right to emphasize that the president's commitment to this. It is an important issue for the country. It's a difficult, complicated question to work through," he said.

Geithner also demurred on a question from Sen. Debbie Stabenow (D-Mich.) on a report that the Bank of Japan's governor had said Tokyo might intervene in the currency market to stem the rise in the yen. "Many of us consider that move by Japan towards intervention at this time to be effectively trying to steal our stimulus. What action would you take as secretary in the event that Japan moves to intervene in the foreign exchange markets?" Stabenow asked.

"That is, as you know, not only an important question but an enormously delicate question, and let me just tell you what I believe and I spent a large part of my professional life in positions at the Treasury responsible for exchange rate policy and these issues," Geithner said. Then he used the same answer he gave to Bunning later. "I believe that it is very important for the United States and the global economy that our major trading partners operate with a flexible exchange rate system in which market forces determine the value of exchange rates," he said.

In a written answer about the future of Paulson's pet China project, the Strategic Economic Dialogue (SED), Gaithner sounded like Paulson. "A deep engagement between our senior economic officials on these topics -- and on the issues of macroeconomic policy and financial stability, energy issues and the environment -- to address differences and effectively resolve problems is a priority. Exactly what form that will take is something that we are considering," he wrote. A Senate vote on Geithner's nomination is tentatively set for Jan. 26.

GAO Report May Spur Action on Foreign Tax Shelters

Congress this year appears poised to take a new shot at the use of foreign tax havens by U.S. corporations, and ammunition for the attack came in a report released Jan. 16 by the Government Accountability Office (GAO). The report found that 83 of the 100 largest publicly traded U.S. corporations in terms of 2007 revenue have subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions, and 74 of the 83 had federal contracts in fiscal 2007.

"The existence of a subsidiary in a jurisdiction listed as a tax haven or financial privacy jurisdiction does not signify that a corporation or contractor established that subsidiary for the purpose of reducing its tax burden," the report cautioned. "We did not attempt to determine if corporations or contractors engaged in transactions with their subsidiaries in order to reduce their tax burden," it added. The GAO tried to identify countries that are considered tax havens using lists compiled by three other international organizations. "We combined three lists of

jurisdictions listed as tax havens or financial privacy jurisdictions prepared by others,” it said. The report noted that of the 50 jurisdictions included in the report, 24 are on all three lists.

“This report shows that some of our country’s largest companies and federal contractors, many of which are household names, continue to use offshore tax havens to avoid paying their fair share of taxes to the U.S. And, some of those companies have even received emergency economic funds from the government,” said Sen. Byron Dorgan (D-N.D.), who requested the GAO report along with Sen. Carl Levin (D-Mich.), chairman of the Senate Permanent Subcommittee on Investigations. “I think we should take action to shut down these tax dodgers, and we will be introducing legislation to do just that,” Dorgan said in a statement.

“We need to put an end to the use of offshore secrecy jurisdictions as tax havens,” Levin said in a statement. Levin also noted the differences in the use of offshore subsidiaries by competing companies. “Not all large U.S. companies are major tax haven users and there is great contrast between competitors,” he said. “For example, Pepsi has 70 tax haven subsidiaries, while Coca Cola has 8; Morgan Stanley has 273, while Fannie Mae has 0; and Caterpillar has 49, while Deere has 3,” Levin said.

Steel Industry Supports Extension of Import Monitoring

Commerce is likely to extend the Steel Import Monitoring and Analysis (SIMA) system for another four years after getting strong support from the U.S. steel industry for its proposal to continue the program. Public comments released by the department on its proposed extension were all favorable, with no foreign steel producers putting their opposition on the record. The program, which was first initiated in 2002 as part of President Bush’s response to a Section 201 case against foreign steel imports, survived even after other steel safeguard measures were revoked following a World Trade Organization (WTO) ruling against the relief action.

Jointly filed comments from seven steel groups and the United Steelworkers applauded the proposed extension. “It is especially important in this current period of global economic crisis and unprecedented economic uncertainty that all interested parties have access to steel import statistics at the earliest possible date,” the comments stated. “However, the industry continues to strongly advocate for the establishment of a permanent SIMA program, which would be administered by the Department,” the groups argued.

United States Steel Corporation (USS) pointed out that SIMA also is an integral aspect of the NAFTA Steel Trade Monitor program which was launched in 2007 and allows online access to consolidated steel trade data in the U.S., Mexico and Canada. USS contended that SIMA places no significant burden on importers. “There is no cost to register with the system and no cost to file an import license,” it asserted.

Money and Technicalities Block TAA in Stimulus Package

It was in, then it was out, and now House members are trying to figure out how to put Trade Adjustment Assistance (TAA) back in the massive economic stimulus legislation (H.R. 598), which will become H.R. 1, that the Ways and Means Committee reported out on Jan. 22. TAA provisions were dropped from the draft of the bill because of problems finding funds for the program and other technicalities, committee members told WTTL. How TAA funds couldn’t be found in an \$800 billion-plus package wasn’t explained. “We couldn’t agree over the cost, but we are working hard to make certain that before the recovery package is completed, that [TAA] is included,” Committee Chairman Charles Rangel (D-N.Y.) told WTTL. “We want it part of the package; we are working with the administration on cost. It’s safe to say, we could not shoehorn it in, we have a cap to work with,” Rangel said. He said he still has hope that TAA will be part of the final package and considers it a top priority. Rep. Sander Levin (D-Mich.),

chairman of the Ways and Means trade subcommittee, told WTTL that he was unaware that a committee press release on the stimulus package had said TAA was to be included in the bill. He disagreed that money was the main issue. TAA “was never included in the bill,” he said. “We are working out mostly technical issues. I don’t think it’s a question of money. There are three or four technical issues that we just didn’t have time to work out but there is a chance that they will be worked out, and it will be put in on the Senate side,” Levin told WTTL. “What we are trying to do is to work out a single piece of legislation that both the Senate and House can adopt so that it wouldn’t have to be in different forms, and perhaps, subject to a conference,” he explained. “We are not quite there yet in our discussions, but I hope we will be [soon],” Levin said (see **WTTL**, Jan. 19, page 3).

Meanwhile, Senate Finance Committee Chairman Max Baucus (D-Mont.) Jan. 23 unveiled his version of the stimulus package. The released outline of his plan calls only for an extension of TAA for workers and firms until December 2010. The program formally expired in December 2007, but has continued under previously approved appropriations. Baucus’s bill, which will be marked up by Finance on Jan. 27, would renew TAA retroactively to Jan. 1, 2008. “Chairman Baucus – along with Senator Grassley, Chairman Rangel, and Rep. Camp – continue to work together on a robust, efficient, bipartisan expansion of Trade Adjustment Assistance. This proposal is estimated to cost \$108 million,” a Finance Committee statement said.

WTO to Track Trade Trends in New Report

To track the impact of the current economic crisis on trade, as well as potential protectionist moves by countries, the WTO will start to issue periodic reports on trade trends and policies, WTO Director General Pascal Lamy announced Jan. 22. “These reports will be factual and we hope will facilitate discussions among members on how to better cope with this crisis,” he said in a speech London (see **WTTL**, Nov. 17, page 1). “We have also recently seen world forecasts of a sharp decline in global remittances that workers send home to developing countries, and this will also have a devastating impact, particularly on small Sub-Saharan countries like Senegal and Ghana where remittances are a key source of finance,” he reported.

“Furthermore, I was in Cambodia at the end of November last year and we were informed then that 60% of textiles and clothing companies in that country do not have orders beyond February 2009 as a result of the slowdown in demand in the U.S. market,” he added. “The news from Southern Africa is equally disturbing. We are told that in December, exports from the textiles and clothing sector to the U.S. market were 30% down from the previous month and are expected to fall further,” Lamy reported.

* * * Briefs * * *

TRANSITION: BIS Deputy Under Secretary Dan Hill is serving as acting under secretary until Obama administration starts to fill empty Commerce posts. Being mentioned as possible ITA under secretary is Frank Sanchez, Tampa, Fla., trade consultant and Obama fundraiser.

EXPORT ENFORCEMENT: After ruling by ALJ, BIS Jan. 7 imposed \$8,000 fine on Wayne LaFleur of Naples Fla., for his unlicensed participation in sailing regatta in Cuban waters in 2003. LaFleur had claimed he had U.S. Coast Guard permission to sail to Cuba. “LaFleur’s assertion that he applied for and obtained from the United Coast Guard permission to leave the security zone with stated destination being Vardero, Cuba, neither was substantiated by the record nor is a defense under the Regulations,” said BIS Deputy Under Secretary Dan Hill. “It is well established that approval of an action by one agency does not alleviate the need of a person to comply with another agency’s regulatory requirements, even if such agency responsibilities might overlap. Nor is there any inconsistency in requiring the person subject to different regulations to meet all such requirements,” he added. This is second BIS enforcement action against participants in regatta (see **WTTL**, Dec. 8, page 4).